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International Convention on the Elimination of all Forms of Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fifty-fifth session
2 - 27 August 1999

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on the Elimination of Racial Discrimination

Chile

1. The Committee considered the eleventh to fourteenth periodic reports of Chile (CERD/C/337/Add.2) at its 1346th and 1347th meetings (see CERD/C/SR.1346 and 1347), on 10 and 11 August 1999. At its 1361st meeting (see CERD/C/SR.1361), on 20 August 1999, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's periodic report, prepared in accordance with the Committee's guidelines, and it appreciates the opportunity to resume a dialogue with the country. The Committee commends, in particular, the frank and transparent spirit which characterized both the written report and the manner in which the delegation presented additional information and responded orally to the wide range of questions raised by the members of the Committee during the consideration of the report.

B. Positive aspects

3. The Committee commends the State party for openly recognizing the existence of racial discrimination on its territory and its historical links with conquest and colonialism. In this context, the Committee also welcomes article 1 of the Act No. 19.253 relating to the Protection, Advancement and Development of the Indigenous Inhabitants of Chile (1993 Indigenous Act) which "recognizes that Chile's indigenous inhabitants are the descendants of the human groups which have existed on the national territory since pre-Colombian times and which conserve their own ethnic manifestations, the land being for them the principal foundation of their existence and their culture".

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4. The Committee welcomes the information from the State party that, according to article 5 of the Constitution, international treaties on human rights and fundamental freedoms such as the Convention which are ratified, promulgated and made effective by the State party are directly applicable by the courts.

5. The Committee welcomes the initiatives taken by the State party to promote the rights of its indigenous population: including the enactment of the 1993 Indigenous Act; the subsequent setting up and activities of the Indigenous Development Corporation; the important steps taken by the State party to ensure the right to land of the indigenous population through land purchase and transfer to indigenous communities, and the setting up of a special judicial system for the indigenous population which recognizes custom as a mode of proof and which allows for legal conciliation of, in particular, land disputes.

6. The Committee notes that further steps have been taken towards reform of the domestic legislation, in particular the proposed amendments to the Constitution to strengthen the legal status of the indigenous population, and the draft reform of the Penal Code which is currently under discussion in the Congress and which is designed to penalize acts of discrimination on the grounds of race, or national or ethnic origin. In this context the Committee also welcomes the intention of the State party to ratify ILO Convention No. 169 on Indigenous and Tribal Peoples (169).

7. The Committee notes with satisfaction that the State party, following the previous concluding observations of the Committee, has made the declaration under article 14 of the Convention recognizing the Committee's competence to examine complaints of persons who claim to be victims of violations by the State party of the rights set forth in the Convention.

8. In relation to article 7 of the Convention, the Committee notes the 1997 educational reform and the efforts of the State party to introduce teaching about human rights and their implementation in the school curriculum. The Committee also welcomes the State party's cooperation with the Office of the United Nations High Commissioner for Human Rights and the hosting of a workshop in 1997 on the possible establishment of a permanent forum for indigenous peoples in the United Nations system.

C. Principal subjects of concern

9. The Committee is concerned about the reported findings of research showing that a considerable part of the Chilean population demonstrates intolerant and racist tendencies.

10. The Committee expresses its concern at the absence of specific legislation to enforce some of the provisions of the Convention. The Committee, taking note that the 1993 Indigenous Act contains a specific article declaring intentional discrimination against indigenous persons an offence punishable by law, and that the National Security Act prohibits fascist organizations, recalls the proposals for reform of the Constitution and the Penal Code, but remains concerned about the current absence of a comprehensive legislation in full accordance with articles 2, paragraph 1 (d) and 4, of the Convention.

11. The Committee is concerned about land disputes which occurred during the period under examination between the Mapuche population and national and multinational private companies, resulting in tension, violence, clashes with law enforcement officials and, allegedly led to arbitrary arrests of members of the indigenous population.

12. The Committee expresses its concern about the situation of migrant workers, in particular of Peruvian nationality.

D. Suggestions and recommendations

13. The Committee commends the State party for having recognized its part in the discrimination experienced by the indigenous population, recalls its general recommendation XXIII and requests that the State party consider the issue of a formal apology, as well as ways to ensure compensation to all those concerned, a policy which, *inter alia*, will significantly contribute to the process of reconciliation in the society as a whole.

14. As part of the ongoing legislation reform process, the Committee recommends that the Constitution be amended to incorporate a prohibition of racial discrimination and that the scope of the Indigenous Act be extended to cover discrimination in effect in accordance with article 1, paragraph 1, of the Convention.

15. The Committee recommends that the State party take appropriate measures, within its ongoing legislative reform, to bring its legislation into full conformity with article 4 of the Convention, in accordance with the State party's obligations under article 2, paragraph 1 (d).

16. The Committee recommends that the State party use all effective means to raise the awareness of its people about the rights of indigenous peoples and national or ethnic minorities. It encourages the State party to continue to provide instruction on human rights standards in schools and organize training programmes for, in particular, law enforcement officials, in the light of general recommendation XIII.

17. In its forthcoming report, the State party should include detailed information relating to the following: the work and activities of the Indigenous Development Corporation; the system of land distribution; the judicial system in place for the indigenous population; the situation of migrant workers, the implementation of articles 4 and 5 of the Convention and, ongoing legislative reforms.

18. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 during the fourteenth meeting of States parties to the Convention.

19. The Committee recommends that the State party's next periodic report, due on 19 November 2000, be an updating report, taking into account the points raised in the present observations.